



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/169171

PRELIMINARY RECITALS

Pursuant to a petition filed October 03, 2015, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Outagamie County Department of Human Services in regard to Kinship Care, a hearing was held on October 29, 2015, at Appleton, Wisconsin.

The issue for determination is whether the agency correctly found that the petitioner was not eligible to receive kinship care payments for children placed in her home.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█
█

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Beth Reimer, Kinship Care Worker
Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Outagamie County. The petitioner has her niece and nephew placed in her care through a probate court order. The petitioner and the Department agree that the children's mother is unwilling or unable to take care of the children for reasons other than poverty.

2. The petitioner applied for kinship care payments for her niece and nephew. The Department ran a background check and found that the petitioner had 32 CPS reports between 2005 and 2011.
3. At the hearing the Department acknowledged that 5 of the 32 CPS reports did not involve the petitioner. That left 27 CPS reports involving this petitioner. All of the reports were unsubstantiated. The most recent report was from 2011.
4. The Department believes that even with the petitioner's CPS history, placement of these children in this petitioner's home is in the children's best interest. The Department nonetheless denied the petitioner's application for kinship care payments because the CPS history "shows a pattern of neglectful behavior."
5. On October 5, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The Kinship Care benefit is a public assistance payment of \$232 per month per child paid to a qualified relative who bears no legal responsibility to support the child. Wis. Adm. Code, §§58.03(12). To be eligible for the payments thereunder, the relative must meet all of the conditions set forth in Wis. Stat. §§48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6). These requirements are also listed under Wis. Adm. Code DCF, §§58.04

When assessing a person's Kinship Care application, the agency first determines whether there is a need for the child or children to be placed with the kinship care relative, and that the placement with the kinship care relative is in the best interests of the child. Wis. Stat. §§48.57(3m)(am)(1m). Next the agency determines whether the child or children meet one or more of the criteria specified in s. 48.13 or 938.13. Wis. Stat. §§48.57(3m)(am)(2). Wis. Stat. §§48.13 is the jurisdictional statute for children in need of protection and services. Finally, the agency conducts a background check. Wis. Stat. §§48.57(3m)(am)(4). If the applicant or another adult in the home has any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child, the agency may deny the application. *Id.*

In this case the agency denied the petitioner's application for Kinship Care because her CPS history "shows a pattern of neglectful behavior." The agency nonetheless believes that it is in these children's best interest to remain in this petitioner's home. The agency further agrees that the children meet one or more of the criteria specified in s. 48.13 because the mother is unwilling or unable to care for these children for reasons other than poverty. Given these facts, I see no basis for the agency to deny the petitioner's application. I agree with the agency that the petitioner's CPS is concerning. I also note that she has no criminal convictions, her CPS reports were unsubstantiated, and the most recent CPS report was from 2011. I further note that the agency has concluded that it is in the children's best interest to remain in the petitioner's home. A circuit court agreed with this determination, and placed the children there through a probate guardianship. As long as it remains in the children's best interest to be placed in this petitioner's home, she is eligible for kinship care payments. Had the agency concluded that placement of these children in the petitioner's home was not in the children's best interest, the outcome of this case could have been different.

CONCLUSIONS OF LAW

The agency correctly found that the petitioner was not eligible to receive kinship care payments for children placed in her home.

THEREFORE, it is

ORDERED

That this case is remanded to the agency with instructions that the agency approve the petitioner's application for Kinship Care effective the date of application. The agency shall comply with this order within 10 days of the date of decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of January, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 12, 2016.

Outagamie County Department of Human Services

DCF - Kinship Care

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